

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DONALD ROSENFELD, and)	
LYNNE ROSENFELD)	No. ED100165
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Steven H. Goldman
DEBORAH J. BONISKE,)	
)	
Appellant.)	FILED: June 24, 2014

Appellant Deborah Boniske appeals from the trial court's judgment in favor of Respondents Donald and Lynne Rosenfeld on their Petition for Declaratory Judgment and Refund of Earnest Money Deposit and against Boniske on her counterclaim for breach of contract. Boniske alleges the trial court erred when it considered terms of an oral agreement between herself and the Rosenfelds that either added to or varied the terms of the fully integrated written agreement entered into by the parties. Boniske further claims the trial court erred in entering an alternative finding that the contract might be voidable under the doctrine of mutual mistake.

REVERSED AND REMANDED.

Division III Holds: Because mutual mistake was not presented to the trial court as a theory of recovery, mutual mistake may not form the basis of any judgment allowing rescission of the contract by the Rosenfelds. Furthermore, the trial court misapplied the law by considering evidence of an oral agreement in violation of the parol evidence rule. Therefore, we reverse the judgment of the trial court, enter judgment in favor of Boniske on the Rosenfelds' claims and on her counterclaim, and remand this matter to the trial court for a determination of Boniske's damages.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

Attorney for Appellant: Ronald F. Borgmann

Attorney for Respondents: Robert E. Jones

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